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TO: Members of the Senate Judiciary Committee

FROM: Shannan Kane, Staff Attorney, and Alison Hirschel, Director, Michigan Elder Justice Initiative

DATE: May 23, 2016

RE: House Bills 5078, 5079, and 5081, as passed by the House

The Michigan Elder Justice Initiative advocates for vulnerable older adults and people with disabilities on issues including long-term care, guardianship, public benefits, and elder abuse. While we applaud the sponsors' continued efforts to identify savings for the Department of Corrections and provide humane alternatives for medically frail prisoners, we remain opposed to this bill package for the following reasons:

- We are not clear how determinations regarding the suitability of parolees to be housed in a nursing facility pursuant to these bills will be made and reviewed. If mistakes are made assessing whether the parolee poses a threat to the typical, frail nursing home population or whether the parolee's needs -- including mental health needs -- can be managed appropriately in the facility, the consequences for vulnerable residents in the facility could be very serious. In a May 3, 2016 Guidance regarding providing services to "justice involved individuals" like the parolees at issue in these bills, the federal Centers for Medicare & Medicaid Services emphasized the importance of assuring the safety and rights of *all* nursing facility residents. See CMS Center for Clinical Standards and Quality/Survey & Certification Group Guidance to Surveyors on Federal Requirements for Providing Services to Justice Involved Individuals, S&C: 16-21-ALL, 5/3/16.
- The bill sponsors clearly did not intend that parolees enjoy the same rights to freedom of choice and association that federal law guarantees other nursing home residents. However, CMS has clearly stated that *all* nursing facility residents—including "justice involved individuals-- must be afforded identical rights. Facilities that fail to honor residents' rights pursuant to federal law risk sanctions and termination from the Medicaid program. See 5/3/16 Guidance at 6-7.
- Although this legislation permits nursing facility staff to be prosecuted if they fail to enforce restrictions on the parolees consistent with the terms of their release, CMS has stated unequivocally that nursing homes "cannot serve as an agent of the pertinent law enforcement or criminal justice supervisory authority by enforcing supervisory conditions

or reporting violations of those conditions to officials. Additionally, there can be no integration of the criminal justice supervisory function into the essential operations or physical environment of the nursing home....” 5/3/16 Guidance at 6. Although we appreciate the fact that HB 5081 was amended to add a knowledge or intent element to certain of the proposed crimes, HB 5081 still, in effect, requires nursing home staff to enforce conditions of a prisoner’s parole under threat of criminal prosecution contrary to CMS Guidance.

- As a practical matter, it is unlikely many nursing homes will want to accept parolees under the terms of the bills and no facility can be required to accept parolees. Current and future nursing facility residents and their families would likely be very concerned to learn that parolees are housed in the same facility as vulnerable older adults and people with disabilities. Thus, accepting parolees could adversely affect a facility’s reputation and occupancy rate. Moreover, nursing facility staff may be hesitant to provide care to parolees and may fear prosecution pursuant to this legislation. Our experience has shown that often it may be the facilities with the least capacity to provide complex services that are most willing to accept challenging applicants.

We thank you for the opportunity to explain our concerns.